

FORM SUMMARY

Name of Form: Dismissal Order (Prisoner Litigation) Under 801.02(7)(d)

Form Number: CV-444

Statutory Reference: §§801.02(7)(d), 802.05(3), Wisconsin Statutes

Benchbook Reference: To be added.

Purpose of Form: To order dismissal of a prisoner's action or special proceeding under 802.05(3)(b), Wisconsin Statutes.

Who Completes It: Judge

Distribution of Form: Original to court, copy to prisoner, copy to Department of Justice.

Accompanying Forms: If the court prepares a memorandum decision concerning the dismissal, that decision should be attached.

New Form/Modification: Modification, last update 1/99.

Modifications: Added a statement on the bottom indicating that the form shall not be modified.

Comments: After the filing of any prisoner litigation (whether the filing fees were prepaid or not), the court is required to review the initial pleading as soon as practicable. See 802.05(3)(a), Wisconsin Statutes. The court is directed to dismiss the action or special proceeding without requiring the defendant to answer if it:

- is frivolous, as determined under §814.025(3), Wisconsin Statutes,
- is used for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation,
- is seeking monetary damages from a defendant who is immune from such relief, or,
- fails to state a claim upon which relief may be granted.

The Department of Justice is requesting that the courts use this form, CV-444, for such dismissals that constitute a "strike" against a prisoner's "three dismissals" limit. The Department of Justice will be maintaining a database of prisoner litigation. Using this form will ensure that questions can be eliminated whether such a dismissal does or does not constitute a strike.

Date: May 31, 2000

If the court does not dismiss the action or special proceeding at this point, a responsive pleading would be filed. If the court at some point thereafter grants dismissal of the action or special proceeding for any of the same reasons cited in §802.05(3)(b)1-4, Wisconsin Statutes, the court should again use this form as the dismissal order. Any memorandum decision should still be attached. If the court grants additional relief or orders beyond the dismissal of the action or special proceeding, the court can either include those additional items within the order or attach them as addenda to the order.

If the prisoner accumulates three or more such dismissals in state or federal court, any future court is required to automatically deny any petition to waive filing fees and costs. The prisoner is required to prepay all such fees and costs in the future (unless a claim of imminent danger of physical harm is made; see CV-440 and CV-441 for further information).

If the court dismisses a prisoner action or special proceeding for a reason other than those cited in the form and which would not constitute a strike against the prisoner, the court can use the more generic dismissal order (CV-418), draft its own order, or have the prevailing party draft an order for the court's signature.

About this form:

This form is the product of the Wisconsin Records Management Committee, a committee of the Director of State Court's Office and a mandate of the Wisconsin Judicial Conference.

If you have additional information that does not change the meaning of the form, attach it on a separate page. The form itself shall not be altered.